TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1885.

No. 1299.

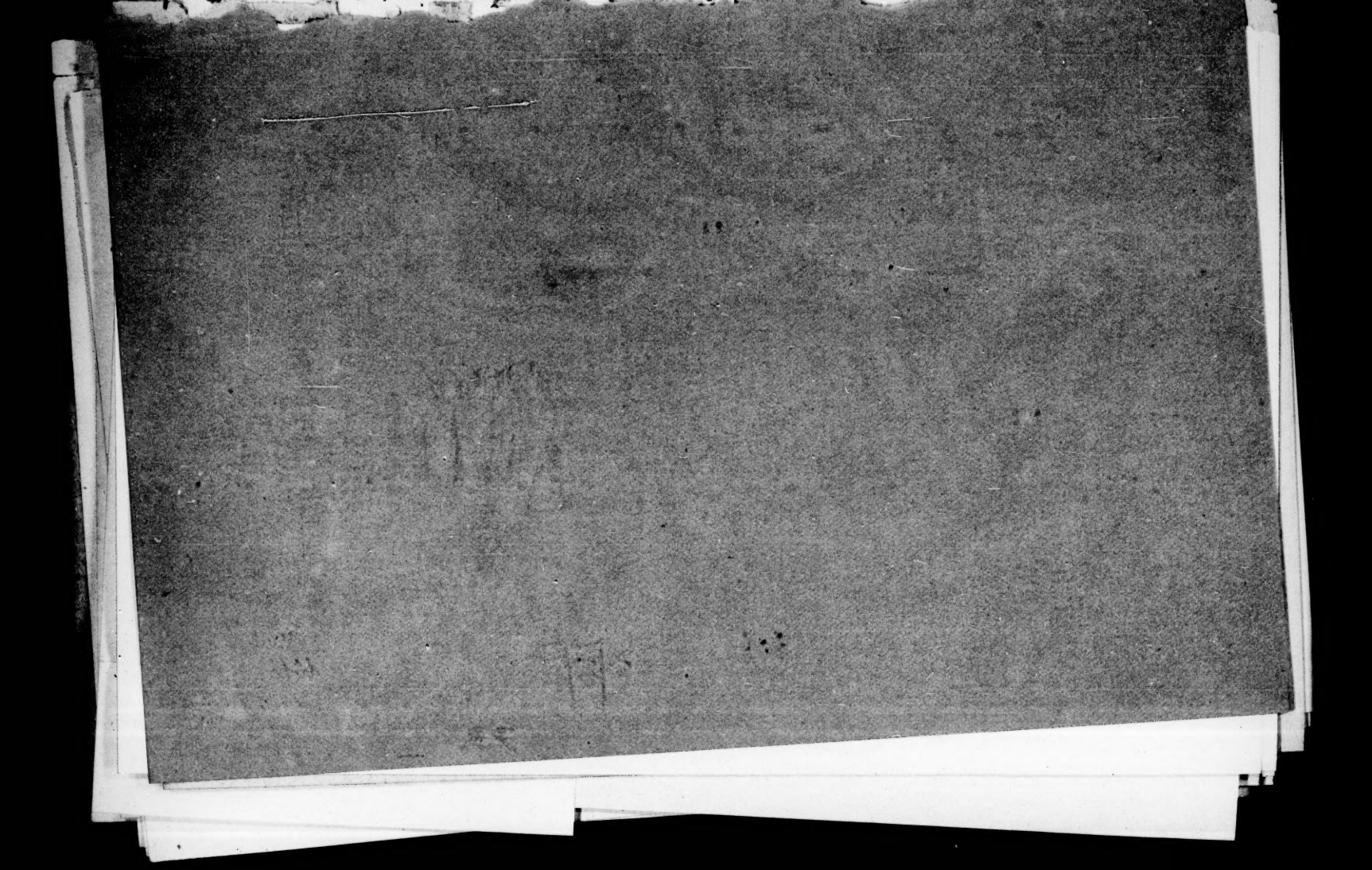
THE UNITED STATES, APPELLANT,

vs.

WILLIAM J. LANDRAM.

APPEAL FROM THE COURT OF CLAIMS.

FILED MARCH 26, 1886.



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INDEX.

	Original.	Print
Petition, filed March 18, 1885	1	1
Traverse, filed April 9, 1885	5	3
Findings of fact and conclusions of law, filed February 1, 1886	6	3
Opinion of the court	8	6
Judgment of the court	10	7
Application of the United States for, and allowance of, appeal	11	7
Certificate	12	8

1 In the Court of Claims.

WILLIAM J. LANDRAM
vs.
THE UNITED STATES. } No. 14569.

1*st.*—*Petition.*—*Filed March* 18, 1885.

WILLIAM J. LANDRAM
vs.
THE UNITED STATES.

To the honorable the judges of the Court of Claims:

The petition of William J. Landram respectfully shows to your honors—

1st. That he is a citizen of the United States.

2d. That prior to July 1, 1879, he was the United States collector of internal revenue for the eighth district of Kentucky; that he held said office continuously during the fiscal years 1880, 1881, 1882, 1883, and 1884, and still continues to be such collector.

3d. That as such collector he was paid and received salary for the said fiscal years under the provisions of sec. 2, act March 1, 1879 (20 Stat., p. 329), as follows.

For the fiscal year ended June 30,	1880	$3,000 00
" " " " " " "	1881	2,875 00
" " " " " " "	1882	2,875 00
" " " " " " "	1883	3,000 00
" " " " " " "	1884	4,375 00

And that he was not paid and did not receive the half per cent. commission upon the taxes from distilled spirits collected by the issue of
2 stamps by him during said periods, as provided by the 5th section of said act of March 1, 1879 (20 Stat., p. 338).

4th. That for and during said fiscal years your petitioner, as such collector, collected taxes upon distilled spirits by the issue of stamps, and made the returns required by law of tax-paid stamps issued by him as such collector, and as such collector he accounted for the tax on the number of gallons of distilled spirits represented by the stamps and coupons issued by him, and he also accounted for and returned to the Commissioner of Internal Revenue, as required by law and regulations, all the books of marginal stubs and coupons of tax-paid spirit stamps issued to him as such collector. The amount of taxes so collected from distilled spirits by the issue of tax-paid stamps and accounted for, and the half per cent. commission accruing thereon, for each fiscal year, is as follows:

Fiscal year ended June 30—	Spirits tax collected.	Commission.
1880	$219,703 10	$1,098 51
1881	203,639 80	1,018 19
1882	206,211 89	1,031 05
1883	284,190 59	1,420 95
1884	875,309 32	4,376 54

5th. That the total net compensation to which petitioner as such collector might become entitled under the law was and is forty-five hundred dollars per annum, and that he became lawfully entitled to receive one-half per cent. commission on the tax on distilled spirits collected by him by the issue of tax-paid stamps, as follows:

For the fiscal year ended June 30, 1880, the salary paid him was $3,000, and he was entitled to receive in addition the half per cent. commission on all the above-named taxes collected by him, which commission amounted to $1,098.51, making a total net compensation that he was entitled to receive as such collector, for said fiscal year, of $4,098.51.

3 For the fiscal year ended June 30, 1881, the salary paid him was $2,875, and he was entitled to receive in addition the half per cent. commission on all the above named taxes collected by him, which commission amounted to $1,018.19, making a total net compensation that he was entitled to receive as such collector for said fiscal year of $3,893.19.

For the fiscal year ended June 30, 1882, the salary paid him was $2,875, and he was entitled to receive in addition the half per cent. commission on all the above named taxes collected by him, which commission amounted to $1,031.05, making a total net compensation that he was entitled to receive as such collector for said fiscal year of $3,906.05.

For the fiscal year ended June 30, 1883, the salary paid him was $3,000, and he was entitled to receive in addition the half per cent. commission on all the above named taxes collected by him, which commission amounted to $1,420.95, making a total net compensation that he was entitled to receive as such collector for said fiscal year of $4,420.95.

For the fiscal year ended June 30, 1884, the salary paid him was $4,375, and he was entitled to receive in addition the half per cent. commission on the above named taxes collected by him to the amount of $125, making a total net compensation which he was entitled to receeive as such collector for said fiscal year of $4,500.

Fiscal year	1880,	additional	compensation	due.....	.....	$1,098 51
" "	1881,	"	"	"	.....	1,018 19
" "	1882,	"	"	"	.....	1,031 05
" "	1883,	"	"	"	....	1,420 95
" "	1884,	"	"	"	....	125 00
						$4,693 70

Wherefore he prays judgment against the United States in the sum of $4,693.70.

Your petitioner says that he is the sole owner of this claim, and
4 has never assigned it or any part of it to any person; that he is justly entitled to the amount herein claimed from the United States, after allowing all just claims, credits, and offsets; and that he has appointed Green B. Raum, of 1226 F street, Washington, D. C., his attorney for the prosecution of this claim.

WILLIAM J. LANDRAM.

STATE OF KENTUCKY,
Garrard Co.:

William J. Landram, of Lancaster, Ky., who, being first duly sworn according to law, on oath says that he signed the foregoing petition; that

the matters and things therein stated are true, to the best of his knowledge and belief.

Subscribed and sworn to before me this 16th day of March, A. D. 1885.

[SEAL.] ROBERT KINNAIRD,
N. P., G. Co.

5 *2d.—Traverse, filed April 9th, 1885.*

In the Court of Claims of the United States, December term, A. D. 1884.

WILLIAM J. LANDRAM
vs.
THE UNITED STATES. } No. 14569.

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

6 *3d.—Findings of fact and conclusions of law.*

Court of Claims.

WILLIAM J. LANDRAM
v.
THE UNITED STATES. } No. 14569.

FINDINGS OF FACT.

This case having been heard before the Court of Claims, the court, upon the evidence, finds the facts to be as follows:

I.

The Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, granted allowances to the claimant as collector of internal revenue for the eighth district of Kentucky, for his annual salary, based upon estimated collections of tax for the fiscal years from 1880 to 1884, inclusive, as follows:

Fiscal years.	Estimated collections.	Annual salary.
1880	$200,000 00	$2,875 00
1881	250,000 00	3,000 00
882	260,000 00	3,000 00
883	220,000 00	2,875 00
884	320,000 00	3,125 00
84, revised	370,000 00	3,250 00
84, second revision	450,000 00	3,500 00

The recommendations of the Commissioner of Internal Revenue, approved by the Secretary of the Treasury, for the allowances of annual salary as above, contained the following statement:

Estimated collections for the fiscal year covered by this recommendation, $———. The allowance recommended herein for compensation of the collector is based upon the following scale of collections, and, should the collections vary from the amount estimated, his compensation will be adjusted at the end of the fiscal year in accordance with said scale:

Scale of compensation of collectors under annual allowance.

For collection of—			
$25,000	or less		$2,000
25,001	to	$37,500	2,125
37,501	to	50,000	2,550
50,001	to	75,000	2,375
75,001	to	100,000	2,500
100,001	to	125.000	2,625
125,001	to	175,000	2,750
175,001	to	225,000	2,875
225,001	to	275,000	3,000
275,001	to	325,000	3,125
325,001	to	375,000	3,250
375,001	to	425,000	3,375
425,001	to	475,000	3,500
475,001	to	550,000	3,625
550,001	to	625,000	3,750
625,001	to	700,000	3,875
700,001	to	775,000	4,000
775,001	to	850,000	4,125
850,001	to	925,000	4,250
925,001	to	1,000,000	4,375
1,000,001	and upward		4,500

7 II.

The Commissioner of Internal Revenue notified the claimant, as collector of internal revenue for the eighth district of Kentucky, that allowances for his annual salary had been granted by the Secretary of the Treasury, on recommendation of said Commissioner, for the fiscal years from 1880 to 1884, inclusive, as follows:

Fiscal years.	Estimated collections.	Annual salary.
1880	$200,000 00	$2,875 00
1881	250,000 00	3,000 00
1882	260,000 00	3,000 00
1883	220,000 00	2,875 00
1884	320,000 00	3,125 0
1884, revised	370,000 00	3,250 0
1884, second revision	450,000 00	3,500

rn ac-
; that

The notifications of the Commissioner of Internal Revenue contained the following statement:

"The allowance made for compensation of the collector is based upon the following scale of collections. Should the collections in the fiscal year 188– vary from the sum estimated ($———), the compensation of the collector will be adjusted at the end of the fiscal year in accordance with the said scale." (Scale same as in finding I.)

III.

The total collections for the fiscal years 1880 to 1884, inclusive, made by claimant as said collector of internal revenue for the eighth district of Kentucky, as shown by the reports of the Commissioner of Internal Revenue, were as follows:

1880	$236,342 19
1881	216,681 51
1882	221,709 36
1883	301,889 19
1884	898,631 77

IV.

The actual amounts of salary allowed and paid claimant as such collector of internal revenue for the fiscal years from 1880 to 1884, inclusive, as adjusted and stated by the First Comptroller of the Treasury, were as follows:

1880	$3,000 00
1881	2,875 00
1882	2,875 00
1883	3,125 00
1884	4,261 89

V.

The amount of taxes collected by claimant during the fiscal years 1880 to 1884, inclusive, as such collector of internal revenue, by the issue of tax-paid spirit stamps, was as follows:

1880	$217,754 10
1881	202,179 60
1882	202,403 30
1883	281,796 10
1884	874,248 00

8

VI.

The claimant as such collector made monthly returns to the Commissioner of Internal Revenue of tax-paid spirit stamps issued by him, and duly accounted for and deposited to the credit of the Treasurer of the United States the taxes collected by him upon the issue of said tax-paid spirit stamps for the fiscal years 1880 to 1884, inclusive, and returned to the Commissioner of Internal Revenue all books of marginal stubs from

which said tax-paid spirit stamps were issued during the fiscal years 1880 to 1884, inclusive, and accounted for the tax on the number of gallons represented on the stamps and coupons that were contained in said books.

CONCLUSIONS OF LAW.

And on the foregoing findings of fact the court decides, as conclusions of law:

The claimant should recover, in addition to the salary which has been paid to him, the commission of one-half of 1 per cent. authorized and allowed by the act 1st March, 1879 (20 Stat. L., p. 329, sec. 5), for the fiscal years ending June 30, 1880, 1881, 1882, 1883, 1884, amounting in the aggregate to $4,724.78.

4th.—Opinion of the court.

NOTT, J., delivered the opinion of the court:

The counsel for the defendants correctly said, upon the argument, that this case involves a single legal question, and that the second and fifth sections of the act 1st March, 1879 (20 Stat. L., p. 329), contain all the law bearing upon it. That question is whether collectors of internal revenue should be allowed the commission of one-half of 1 per centum on tax stamps, as provided by the fifth section of the statute, subject to all the limitations of the second section, or subject only to the limitation of section 3145 of the Revised Statutes.

That commission for a long time had formed, and still continued to form, a part of a collector's compensation. The act 1879, as originally framed and passed by the House of Representatives, undoubtedly was intended to materially change the system of compensation, and to abolish this commission. But when the bill came to the Senate it was amended by inserting in it a section of the then existing law, and that amendment is this fifth section of the act, which, at the time of its insertion in the bill, was a part of section 3314 of the Revised Statutes. No change of form or phraseology was made. Even the words "this title," which referred to Title XXXV of the Revised Statutes, and which have no other or new significance in the act 1879, were retained in the amendment. It was as if the draughtsman who prepared the amendment simply tore a section out of the Revised Statutes and pasted it upon the bill under consideration.

When Congress thus re-enact a distinct and entire provision of existing law, with no change in form or phraseology, and with no new context which must necessarily modify its meaning or enlarge or restrict its operation, it must be held that Congress intended to leave an existing provision of law unrepealed and unaltered, and that it should be interpreted
9 and administered precisely as if Congress, instead of repeating it, had designated it in the usual manner and declared that it should not be repealed by the new enactment.

The purpose which must be ascribed to Congress in such instances of legislation is not to enact, but to codify. It is a rational purpose and a matter of no small help and convenience to public officers who have to administer our statute law.

In the present instance it may be conceded that this provision of that

old law is incongruous with other provisions of the new and that its language as transplanted is even inconsistent with itself; but it cannot be inferred that Congress by retaining an old provision intended a new thing.

The words "this title" in the Revised Statutes meant Title XXXV, and the reference to Title XXXV as "this title" was but a form of phraseology. If the Revised Statutes, instead of saying "this title," had said "Title XXXV," and Congress had transferred those words to the act of 1879 instead of the words "this title," not the shadow of a doubt would rest upon the legislative intent. Assuredly, if Congress had intended to change the law, it is but reasonable to hold that they would have changed the language of the law. The words "this title" in the new law must be deemed to mean what they meant in the old, Title XXXV of the Revised Statutes; and the limitation which they there set upon a collector's stamp commissions continues to be the limitation of the act of 1879. It is to be found in section 3145 of the Revised Statutes, which declares that "the total net compensation of a collector shall not in any case exceed four thousand five hundred dollars a year."

The judgment of the court is that the claimant recover the balances of his commissions under the fifth section of the act of 1879, and within the limit of section 3145 of the Revised Statutes, amounting in the aggregate to the sum of $4,724.78.

10 *5th.—Judgment of the court:*

At a Court of Claims held in the city of Washington on the 1st day of February, A. D. 1866, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the said William J. Landram do have and recover of and from the United States the sum of four thousand seven hundred and twenty-four $\frac{78}{100}$ dollars ($4,724.78).

11 *6th.—Application of the United States for, and allowance of, appeal.*

WILLIAM J. LANDRAM
vs.
THE UNITED STATES. } No. 14569.

From the judgment rendered in the above-entitled cause on the 1st day of February, 1886, in favor of claimant, the defendants, by their Attorney-General, on the 22d day of March, 1886, make application for, and give notice of, an appeal to the Supreme Court of the United States.

ROBERT A. HOWARD,
Assistant Attorney-General.

Filed March 22, 1886.

And now, to wit, March 22, 1886, it is ordered that the appeal be allowed as prayed for.

WILLIAM A. RICHARDSON,
Chief Justice.

12 In the Court of Claims.

WILLIAM J. LANDRAM
vs.
THE UNITED STATES. } No. 14569.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of the application of the defendants for allowance of appeal to the Supreme Court of the United States, and of the allowance of said appeal.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this twenty-sixth day of March, A. D. 1886.

JOHN RANDOLPH,
Ass't Clerk Court of Claims.

(Indorsement on cover:) No. 1299. The United States, appellant, vs. William J. Landram. Court of Claims. Filed March 26, 1886.

vs Landram } No 1299

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

WILLIAM J. LANDRAM
vs.
THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

Comes A. H. Garland, Attorney-General for the United States, and states and shows to the Court here that this cause involves questions of general importance, and quite a number of other suits before the Court of Claims will rest upon the decision of this; and he annexes hereto a copy of a letter of the 24th instant from the Acting Secretary of the Treasury, showing the importance of an early decision of this cause;

Wherefore he moves it be advanced on the docket and as early a hearing of it be had as the business of the court will permit.

A. H. GARLAND,
Att'y Gen'l.

I join in the foregoing motion and request.

GREEN B. RAUM, *Attorney,*
for WILLIAM J. LANDRAM.

Copy.

TREASURY DEPARTMENT,
March 24, 1886.

THE HONORABLE THE ATTORNEY-GENERAL:

SIR: The Acting Commissioner of Internal Revenue, under date of the 23d instant, referring to the case of Landram *vs.* The United States, which you were recently requested to appeal from the Court of Claims to the United States Supreme Court, says:

"This case is a representative one. It is understood that fifty-six other suits precisely similar are now pending before the Court of Claims, and that there are several others to be instituted. At least twenty-seven of the present collectors are entitled (under section 3314, R. S., as amended by section 16 of the act of May 28, 1880, 21 Stat., 148,) to a commission of one-half of one per centum on the collections of tax on spirits, now being made, if the decision of the Court of Claims is correct.

"It is desirable that the question of the right of collectors to such commissions shall be settled as early as possible, not only to avoid the labor and expense attending the numerous other suits, but to give this office a rule for its future action. Counsel for Landram expresses a willingness to have the case submitted to the Supreme Court upon briefs."

For the reasons stated, I respectfully request, as suggested by the Acting Commissioner, that you have this case advanced in the Supreme Court and submitted, under the twentieth rule, to this Court.

Respectfully yours,

C. S. FAIRCHILD,
Acting Secretary.

118-81

Office Supreme Court U. S.
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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES
vs.
WILLIAM J. LANDRUM. } No. 1299.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

APPENDIX.

This case involves a single legal question.

Claimant was internal-revenue collector for the eighth district of Kentucky from July 1, 1879, to June 30, 1884.

During that period he made annually the following collections, and was paid the following salary:

For fiscal year—	Tax collected from distilled spirits.	Total tax collected.	Salary paid.
1880	$217,754 10	$236,342 19	$3,000 00
1881	202,179 60	216,681 51	2,875 00
1882	202,403 30	221,709 36	2,875 00
1883	281,796 10	301,889 19	3,125 00
1884	874,248,00	898,631 77	4,261 89

He claims that for said period he was entitled to a commission of one-half of 1 per cent. on the amount of taxes collected by him annually from distilled spirits, *in addition* to the salary which he has received, provided that in no one year should his total compensation, including salary and the commission, exceed the sum of $4,500.

This claim is based upon the fifth section of the act of March 1, 1879 (20 Stat., p. 338). That section and the second section of the same act (20 Stat., p. 329) contain all the law bearing upon the question of collectors' compensation.

The question of construction involved in this case is important. The Internal Revenue Bureau has not, since the passage of the act of 1879, been paying to the collectors any commission upon the tax collected from distilled spirits in addition to the salary allowed in gross by the Secretary of the Treasury upon the recommendation of the Commissioner of Internal Revenue. If the collectors are entitled to this commission, as claimant con-

tends, the aggregate indebtedness of the Government to its internal-revenue collectors amounts to a very large sum.

The Commissioner of Internal Revenue and the First Comptroller of the Treasury deny the right of the collectors, under the law, to this commission in addition to the salaries allowed and paid them, and this court in this case must settle the controversy.

Prior to the act of July 20, 1868, the compensation of collectors, including the pay of their deputies, clerks, &c., was as follows:

A salary of $1,500 per annum and commissions on collections, to wit: 3 per cent. on first $100,000; 1 per cent. on next $300,000; one-half per cent. on next $600,000; one-eighth per cent. on residue.

The law of July 20, 1868, provided for the present system of paying taxes on spirits by the use of stamps. This system increased the labors of the collector's office and consequently the office expenses. To meet the increased expense, there was provided by the said act of 1868 an additional commission of one-half of 1 per cent. on all taxes collected on distilled spirits.

It was found, however, that the provisions for salaries and commissions were inadequate to meet the expenses of collecting the internal revenue, and therefore, when the law of March 1, 1879, was enacted, it was provided as follows:

> SEC. 2. * * * That each collector of internal revenue shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury upon the recommendation of the Commissioner of Internal Revenue. Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore

provided by law: *Provided, however,* That the salaries of collectors shall be fixed at $2,000 each per annum where the annual collections amount to $25,000 or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the maximum limit of $4,500, which latter sum shall be allowed in all cases where the collections amount to $1,000,000 or upward. * * *

* * * *Provided,* That the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal duties collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered. But the total net compensation of a collector shall not, in any case, exceed $4,500 a year; and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.

SEC. 5. * * * The books of tax-paid stamps issued to any collector shall be charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax-paid stamps issued by him to be affixed to any cask or package containing distilled spirits on which the tax has been paid, and account for the amount of the tax collected; and when the said collector returns to the Commissioner of Internal Revenue any book of marginal stubs, which it shall be his duty to do as soon as all the stamps contained in the

book when issued to him have been used, and accounts for the tax on the number of gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of 1 per centum on the amount of such tax, in addition to any other commission by law allowed, provided that the total net compensation of collectors, as fixed by this title, shall not be thereby increased.

The provisions of section 2 are clear and unambiguous. Apparently they were intended to form a new and complete system for the compensation of collectors and their deputies, and the payment of all necessary office and other expenses connected with their work. The salary of all collectors who collected $25,000 or less and $1,000,000 or more is fixed. The salaries of those who collected more than $25,000 and less than $1,000,000 were to be graduated between $2,000 and $4,500 by the Secretary of the Treasury upon the recommendation of the Commissioner of Internal Revenue. The salary of such collectors thus fixed was by the express terms of the act to be in lieu of the salaries and commissions heretofore provided by law.

This commission of one-half of 1 per cent. was one of the items which had for years gone to make up the gross compensation of collectors. If section 5 adds it to the salary of collectors, as fixed by section 2, section 5 certainly repeals section 2 in so far as that section enacts that the salary given by it shall be in lieu of all salaries and commission heretofore provided by law.

In the second place, the proviso to section 5 declares: "That the total net compensation of collectors, as fixed by this title (section 2), shall not be thereby increased." Now, by section 2 allowance for payment of deputies, office expenses, &c., is entirely distinct from the allowance for collector's salary. That allowance is net under section 2. If, then, this commission given by section 5

is, as claimant insists, in addition to the allowance under section 2 for his net annual salary, the proviso to section 5 is a dead letter and wholly without meaning. Claimant attempts to escape the force of the proviso by maintaining that it means that the salary plus the commission shall not exceed the limit of $4,500 put by section 2 to the salaries of such collectors as collect $1,000,000 and over annually. The proviso cannot be twisted to any such meaning. As we have seen, the compensation under section 2 is net, and the prohibition is against increasing this net allowance *at all*, not against increasing it above $4,500. The salary of those collectors who collect between $25,000 and $1,000,000 is by the act fixed as firmly at the sum allowed by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue, as is the salary of those collecting under $25,000 or over $1,000,000 by the act itself. If the construction maintained by claimant is correct, there is no limit of $4,500 to the compensation which collectors can earn in a year. The sum allowed by the Secretary is as much the limit to a collector's salary as $4,500 is to those collecting $1,000,000 or more.

If Congress had intended to convey by the proviso the meaning which claimant would put upon it, Congress would have used very different phraseology. In the third place section 5 does not provide that the one-half of 1 per cent. commission shall be in addition to the salary allowed under section 2, but provides that it shall be in addition to any other commission allowed by law. No other commission is allowed by law. Therefore we maintain that there is nothing in the language of section 5 justifying the construction upon which claimant insists, and that there is both in section 2 and the proviso to section 5 provisions which are annihilated by it.

On the contrary, we maintain that Congress intended just what the plain language of section 2 and of the pro-

viso to section 5 implies, and that section 5 does not conflict with this intention.

The one-half of 1 per cent. by section 5 was given originally to pay for increased clerical help required in connection with the introduction of stamps into the revenue system.

We contend that it was carried into the act of 1879, not to do away with any part of section 2, but to supplement it in one particular. Section 2 provides for allowance by the Secretary of a sum to pay expenses and deputies just as well as for collectors' salary. It also provides a lower and higher limit for such salaries. It does not provide a lower or higher limit for allowances for deputies and other expenses. We insist that by section 5 it provided that at least one-half of 1 per cent. of collections on distilled spirits should be allowed to meet expenses, &c., of collection, and that the proviso was added to make it plain beyond all question that the per centum was to go toward expenses and not to the personal salary of collectors. This construction does harmonize the two sections, and by it the commission goes to defray the expense it was originated to meet, and which it did meet under the system from which it was transplanted into the act of 1879.

We insist that this view is free from the serious difficulties in the way of any other, and, above all, that it carries out the main purpose of the act, which was to have the Internal Revenue Commissioner, with the approval of the Secretary, and untrammeled within prescribed limits, grade the salaries of his agents in accordance with what he believed to be just and equitable.

There is another view of this matter which seems fatal to claimant's case. There is no provision requiring the Commissioner to separate the amount allowed under section 2 from the amount allowed under section 5. The presumption is that Secretary and Commissioner did their

duty; and if one-half of 1 per cent. was due the collector, it was included in the total salary allowed and paid.

But if the collector ever had a cause of action it is barred now.

Section 2 provides that after one year elapsed from the close of the fiscal year in which the services were rendered no additional allowance to the collector shall be made. This limitation of one year should be respected here.

To hold that while the Government could not pay voluntarily after one year it might still be made to pay by suit, would bring about a condition of affairs which Congress could not have intended.

We ask that judgment be entered for the defendants.

Respectfully submitted.

ED. M. WATSON,
Assistant Attorney.

118-

Office Supreme Court U. S.
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JAMES H. McKENNEY.
CLERK.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES,
Appellant,

vs.

WILLIAM J. LANDRAM.

No. 1,299.

Appeal from the Court of Claims.

BRIEF FOR THE APPELLEE.

GREEN B. RAUM,
Attorney for Appellee.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1885.

THE UNITED STATES, *Appellant*,
vs.
WILLIAM J. LANDRAM. } No. 1,299.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the Appellee.

The facts in this case, as found by the Court of Claims, show that the compensation of appellee, as Collector of Internal Revenue during the period in question, was paid upon allowances made by the Secretary of the Treasury upon recommendation of the Commissioner of Internal Revenue, on a graduated scale based on his aggregate collections of Internal Revenue taxes, and that such compensation during no fiscal year aggregated the sum of forty-five hundred dollars. They further show that during said period the appellee collected large sums of money on account of taxes upon distilled spirits, by the issue of tax-paid spirit stamps, and that he duly accounted for the taxes so collected, for all the stamps delivered to him as collector, and made due return thereof to the Commissioner of Internal Revenue.

In a letter from the Acting Secretary of the Treasury, ed with the motion of the Hon. Attorney General, for ad- ncing this case on the docket, it is stated:

"This case is a representative one. It is understood that fifty-six other suits precisely similar are now pending before the Court of Claims, and that there are several others to be instituted. At least twenty-seven of the present collectors are entitled (under section 3,314, R. S., as amended by section 16 of the act of May 28, 1880, 21 Stat., 148,) to a commission of one-half of one per centum on the collections of tax on spirits, now being made, if the decision of the Court of Claims is correct.

"It is desirable that the question of the right of collectors to such commissions shall be settled as early as possible, not only to avoid the labor and expense attending the numerous other suits, but to give this office a rule for its future action."

As stated in the opinion of the Court of Claims and in argument by the counsel for the United States in that Court, this case presents a single legal question, and that question is whether the claimant, as Collector of Internal Revenue, is entitled under the act of March 1, 1879, (20 Stat., p. 329,) to claim, in addition to a salary based on his total annual collections, as provided for in section 2 of said act, a commission of one-half per centum on his collections of tax from distilled spirits, as provided for in Sec. 5 of said act, provided such commissions shall not increase his total net compensation beyond $4,500 per annum. It was stated by the counsel for the United States in the argument below that "the Internal Revenue Bureau has not, since the passage of the act of 1879, been paying to the Collectors any commission upon the tax collected from distilled spirits in addition to the salary allowed in gross by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue." And that "the Commissioner of Internal Revenue and the First Comptroller of the Treasury deny the right of the Collectors, under the law, to this commission in addition to the salaries allowed and paid them, and this Court in this case must settle the controversy."

The following provisions of the act of March 1, 1879 contain all the law now in force regulating the compensation of Collectors of Internal Revenue:

Act March 1, 1879, 20 Stat., p. 329.

SEC. 2. * * * *That each collector of internal revenue shall be authorized to appoint, by an instrument in writing under his hand, as many deputies as he may think proper, to be compensated for their services by such allowances as shall be made by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue. Allowances shall also be made in like manner for salary and office expenses of collectors, all of which shall be in lieu of the salary and commissions heretofore provided by law: Provided, however, That the salaries of collectors shall be fixed at two thousand dollars each per annum where the annual collections amount to twenty-five thousand dollars or less, and shall, by the Secretary, on the recommendation of the Commissioner, be graduated up to the maximum limit of four thousand five hundred dollars; which latter sum shall be allowed in all cases where the collections amount to one million of dollars or upward. * * *

* * * *Provided, That the Secretary of the Treasury, on the recommendation of the Commissioner of Internal Revenue, be authorized to make such further allowances, from time to time, as may be reasonable, in cases in which, from the territorial extent of the district, or from the amount of internal duties collected, it may seem just to make such allowances; but no such allowance shall be made if more than one year has elapsed since the close of the fiscal year in which the services were rendered. But the total net compensation of a collector shall not in any case exceed four thousand five hundred dollars a year; and no collector shall be entitled to any portion of the salary pertaining to the office unless such collector shall have been confirmed by the Senate, except in cases of commissions to fill vacancies occurring during the recess of the Senate.*

Act March 1, 1879, 20 Stat. p. 338.

SEC. 5. * * *The books of tax-paid stamps issued to any collector shall be charged to his account at the full value of the tax on the number of gallons represented on the stamps and coupons contained in said books; and every collector shall make a monthly return to the Commissioner of Internal Revenue of all tax paid stamps issued by him to be affixed to any ...sk or package containing distilled spirits on which the tax has ...n paid, and account for the amount of the tax collected; and ...en the said collector returns to the Commissioner of Internal ...venue any book of marginal stubs, which it shall be his duty to ...s soon as all the stamps contained in the book when issued to ... have been used, and accounts for the tax on the number of

gallons represented on the stamps and coupons that were contained in said book, there shall be allowed to the collector a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed, provided that the total net compensation of collectors, as fixed by this title, shall not be thereby increased. * * *

The provision from Section 5, above quoted, was re-enacted without the change of a word, by Sec. 16, act May 28, 1880. (21 Stat., p. 148.)

From the above it is seen that there are three substantive provisions of law governing the compensation of collectors, two of them mandatory, and one permissive.

1st. Allowances *shall* be made of salaries based upon the annual collections, the minimum salary being $2,000, and the maximum $4,500.

2d. There *shall* be allowed a commission of half per cent. on the amount of tax collected from the sales of tax-paid spirit stamps, (if there be any such collections,) provided that the total net compensation of collectors ($4,500) shall not be thereby increased.

3d. The Secretary of the Treasury is authorized to make further allowances, when it *may seem to him just.*

The graduation of the salaries of collectors, up to the maximum limit, based on the annual collections, as provided in Sec. 2, has been fixed by a scale, as shown in Finding of Fact No. 1.

These provisions of law, taken together and giving to each one its full force and effect, constitute a consistent and harmonious system under which Collectors of Internal Revenue are to be compensated, as follows:

1st. The minimum salary is fixed at $2,000, upon collections of $25,000, or less; and the maximum at $4,500, upon collections of a million dollars and upwards, and the salaries are to be graduated between $2,000 and $4,500, in such proportion to the gross collections made by each collector as shall be fixed by the Secretary upon the recommendation of the Commissioner of Internal Revenue.

2d. For collections of tax upon distilled spirits, each collector is to receive a half per centum commission in addition to the above, always provided that such addition does not increase his salary above the maximum limit.

3d. Further allowances may be made to a collector within the $4,500 limit by the Secretary of the Treasury, on recommendation of the Commissioner of Internal Revenue, but not after more than one year has elapsed since the close of the fiscal year in which the service was rendered.

It will be seen that Sec. 2, Act March 1st, 1879, above quoted, contains a provision that the allowances therein required to be made to collectors "shall be in lieu of the salary and commissions *heretofore* provided by law." Now, where were the salary and commissions *heretofore* provided by law, at that time, to be found? In Sec. 3145, R. S., which gave a salary and general commissions on all collections, and also in Sec. 3314, R. S., which gave a special commission on collections of tax from spirits. But by Sec. 5, a *subsequent* section of the same Act of March 1, 1879, Sec. 3314, R. S., as it then stood, was repealed, and a new Sec. 3314 substituted, which re enacted the provision for commission on tax from spirits without change, so that the special commission on distilled spirits became, by virtue of Sec. 5, of the Act of March 1, 1879, a commission provided by law *simultaneously* with the other allowances to collectors therein made, and could not be referred to as a commission *heretofore* provided by law.

We find in Sec. 2 a provision that the compensation of collectors therein provided for is to be in lieu of the *salary and commissions heretofore provided by law*, and in Sec. 5 we find a provision for a commission of one-half of one per centum on the tax on spirits, to be allowed to the collector *in addition to any other commission by law allowed.*

Therefore, the allowances to collectors made in Sec. 2, act March 1, 1879, cannot be regarded as in lieu of that made by Sec. 5. The commission of one-half per cent. on tax collected on distilled spirits to be paid to collectors is, as it

is expressly stated to be, *in addition* to any other commission by law allowed. After all the allowances of Sec. 2 are made and provided for, this one in Sec. 5 comes in afterward as *additional*, the intent of the lawmakers evidently being to stimulate a faithful collection of the spirits tax, (which tax had been fruitful of so much fraud,) by a *special, particular* and *extraordinary* reward to the collectors of such revenue.

The only limitation to this commission is the proviso that the total net compensation of collectors, as fixed by this title, shall not be thereby increased. What was the total net compensation of a collector, as fixed by this title? This "title" evidently refers to the Internal Revenue title XXXV of the Revised Statutes, which is under amendment. On referring to that title we find in Sec. 3145, these words, "but the total net compensation of a collector shall not, in any case, exceed four thousand five hundred dollars a year."

In further explanation of the meaning of the phrase "*total net compensation*," in Section 5 of the act of 1879, it seems enough to say that that phrase is expressly *defined*, as it were, in Section 2 of the same act as meaning *the* $4,500 *a year*, and that the same definition had already been affixed by the act of May 8, 1872, (17 Stat., p. 68,) which introduced it into this connection, and also by the subsequent acts in which it occurs, viz., 1872-'3, ch. 13, and 1873, ch. 226. (17 Stat., 403, 494.)

The word commission in this law is to be construed as also equivalent to the words "allowance" or "compensation." The words, "in addition to any other commission by law allowed," are not words of *limitation*, but words of *enlargement*, the intention evidently being to give this commission to collectors in addition to any other commission or allowance that had been or might hereafter be provided by law. If this is not the true intendment, then Congress must be supposed to have done, in enacting this portion of Sec. 5, of the act of March 1, 1879, a vain and useless thing, with, out meaning and without object. But, on the other hand, we maintain that Congress has used plain, apt and unam

uous words to express a legitimate and laudable purpose, which cannot be construed or explained away without doing violence to the fundamental principles which underlie the construction of statutes.

Section 5 grants the half per centum commission on the taxes collected from distilled spirits as clearly and effectually as Section 2 makes other provisions for the compensation of collectors, and the same limitation as to the maximum amount to which a collector can become entitled, is adopted in both sections. Section 2 declares that the total net compensation of a collector shall not, in any case, exceed four thousand five hundred dollars a year. Sec. 5, after granting the half per centum commission, provides that the total net compensation of collectors, as fixed by this title, shall not be thereby increased.

It may be contended that Sec. 2 has made complete provision for the pay of collectors, and therefore renders nugatory the provision of Sec. 5. Such a position would be untenable, for the reasons—

1st. That the provisions of these two sections are not incompatible, but can be enforced harmoniously together.

2d. If the provisions of these two sections were in conflict or repugnant to each other, Sec. 5, being the later expression of the legislative will, would stand.

From an examination of these statutes we contend that it appears too clearly for any denial that the law makes a *discrimination* in favor of the collectors of tax from distilled spirits, so that in the case of two collectors each collecting a total of $400,000, one of whom collected $200,000 from distilled spirits, and the other nothing from that source, while each would be entitled to $3,375 under the scale of salaries established by the Secretary of the Treasury, yet the collector of the spirits tax must receive $1,000 more than the other, by virtue of the half per cent. commission on that tax allowed him by law.

In the case of collector Landram, the salary paid him by the Department was the same as it would have been had his

collections not embraced a single dollar from distilled spirits, and been derived exclusively from tobacco or beer.

The learned counsel for the United States stated, in his argument in the court below, "that the compensation under Sec. 2 is *net*, and the prohibition is against increasing the *net* allowance at all."

Also, that—

"The salaries of those collectors who collect between $25,000 and $1,000,000 is, by the act, fixed as firmly at the sum allowed by the Secretary of the Treasury, upon the recommendation of the Commissioner of Internal Revenue, as is the salary of those collecting under $25,000 or over $1,000,000 by the act itself." "The sum allowed by the Secretary is as much the limit to a collector's salary as $4,500 is to those collecting $1,000,000 or more."

This view renders nugatory the latter part of Section 2, and all of Sec. 5. If the amount allowed by the Secretary, on recommendation of the Commissioner, under the first part of Sec. 2, cannot be increased by a *further allowance* under the proviso of said section, and by one-half per cent. commission under Sec. 5, then those parts of the law are absolutely without force or meaning. This position assumes that the amount allowed under the graduated scale becomes the fixed salary, and cannot be added to in any manner; that the Secretary has exhausted his power when he makes an allowance under the first part of Sec. 2, in face of the fact that the authority to make *further allowance* is specifically granted to the Secretary, and the right to the half per cent. commission is plainly given to collectors. *There is but one pecuniary limit to the authority of the Secretary to increase a collector's salary by a further allowance, and but one limit to the right of a collector to receive the half per cent. commission in addition to his compensation, and that limit is fixed by law in both cases at* $4,500.

The act of May 8, 1872, (17 Stat., p. 68,) declared that "Thereafter the total net compensation of collectors of internal revenue shall in no case exceed $4,500 per annum

This langnage and this limitation have been used in all subsequent statutes upon the subject. The 6th section of the Act of December 24, 1872, (17 Stat., p. 403,) after abolishing the office of assessor, and transferring to collectors all of the additional commission of one-half of one per centum upon the tax upon distilled spirits, "provided that the total net compensation of collectors, as now fixed by law, shall not be thereby increased." And so Sec. 5, of the Act of March 1, 1879, declared that "There shall be allowed to the collector a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed, provided that the total net compensation of collectors, as fixed by this title, shall not be thereby increased."

The learned counsel in the Court below seemed to think that the true construction of these statutes was, that the collector is to have this commission, provided it does not increase the amount of the allowance of salary already made to him by the Secretary; that is to say, that he is not to have it at all; or, in other words, that Congress has continually mocked collectors with the promise of a commission which they could not possibly become entitled to receive.

The learned counsel further said that "Section 5 does not provide that the one-half of one per cent. commission shall be in addition to the salary allowed under section 2, but provides that it shall be in addition to any other commission allowed by law. No other commission is allowed by law. Therefore we maintain that there is nothing in the language of Section 5 justifying the construction upon which claimant insists."

We regard this as a most technical objection. It will be observed that the compensation of collectors in the first instance is based upon the gross amount of their collections, and between the limits of $2,000 and $4,500, is to be graduated up upon the basis of increased collections above $5,000 and up to $1,000,000. Salaries so fixed may reasonably be considered as a commission upon collections. It is

obvious that this compensation granted by the first part of Section 2 was contemplated in the enactment of Section 5, and it was the sum of money received by the collector under Section 2 which should not be augmented beyond $4,500 by the commission granted by Section 5.

A position which seems to us equally untenable was put forward, to the effect that this half per cent. commission under Section 5 was to go toward expenses, &c., of collection, and not to the personal salary of collectors. We reply that expenses of collection are appropriated for by law, and also the pay of deputies; but the half per cent. commission has never been paid to any person or for anything since the act of March 1, 1879. This position has no support either in the letter of the statute or in the history of the legislation embodied therein.

It is not necessary to quote before this learned tribunal authorities in support of such fundamental principles of legal construction, as that statutes in *pari materia* must be construed together so that the whole may, if possible, stand, and that Courts will not adopt subtle and forced construction of statutes in order to avoid the plain import of the language used. A passage from Vattel, which has been repeatedly adopted by New York Courts may, however, not, inappropriately be quoted here.

"It is not permitted to interpret what has no need of interpretation. When an act is conceived in clear and precise terms, when the sense is manifest and leads to nothing absurd, there can be no reason to refuse the sense which it naturally presents. To go elsewhere in search of conjectures in order to restrain or extinguish it, is to endeavor to elude it. If this dangerous method be once admitted there will be no act which it will not render useless." *Vattel, b.* 2, *ch.* 17, § 263, *N. Y. Ct. of Errors*, 1820; *Jackson* vs. *Lewis*, 17 *Johns*, 475, *affirming S. C.*, 13 *ib.*, 504, *S. P.*, *Supreme Ct.*, 1850; *Waterford & Whitehall Turnpike* vs. *People*, 9 *Barb.*, 161.

The learned judge, in rendering the opinion of the Cou

of Claims, has set forth the legal effect of the re-enactment in the act of March 1, 1879, of the provision granting this half per cent. commission on collections from distilled spirits to collectors, with such clearness as to make any further comment superfluous. That point alone is decisive of this case.

In this connection, a brief history of this provision, as it appears in the statutes, is interesting and important.

The act of 1868, *ch.* 186, (which specially provided for the securing of taxes upon *distilled spirits*,) enacted that stamps should be attached to packages of spirits, and "allowed a *commission of one-half of one per centum on the amount of spirits distilled after the passage of this act, in addition to any other commission by law allowed*, which shall be equally divided between the collector receiving the tax and the assessor of the district in which the distilled spirits were produced." (Sec. 28, 15 Stat., 138.)

The act of 1872-'3, *ch.* 13, abolished the office of assessor, and gave the above additional commission of one-half of one per centum upon distilled spirits to the collector alone, *his total net compensation*, however, not to be thereby increased. (Sec. 5, 17 Stat., 403.)

Section 3314, *R. S.*, presents the acts of 1868 and 1872 above, and therefore provides for the issue to collectors of books of tax paid stamps to be attached to casks, &c., of distilled spirits, and allows to them "a commission of one-half of one per centum on the amount of such tax, in addition to any other commission by law allowed: *Provided*, That the total net compensation of collectors as fixed by this title shall not be thereby increased."

Then, we have the act of March 1, 1879, and of May 28, 880, heretofore quoted, which re-enact the provisions of c. 3314, R. S., in this regard without change. Thus, it ears that Congress has seen fit to give this commission, inuously, since 1868.

ior to the passage of the act of March 1, 1879, no ques- was ever made as to the right of collectors to this com-

mission, but since the passage of that act the accounting officers of the Treasury have withheld these commissions and have neglected and refused to allow and pay them. It is clear that in so doing their action has been contrary to law. For these reasons it is respectfully requested that the judgment of the Court of Claims in this case be affirmed.

All of which is respectfully submitted.

GREEN B. RAUM,
Attorney for Appellee.